

PATENTS ACT

Act No. 657 of 2003

Section 1-Definitions of Patents and Inventions.

- (1) Patent means the title granted to protect an invention.
- (2) Invention means an idea of an inventor which permits in practice the solution to a specific problem in the field of technology.
- (3) An invention may be, or may relate to, a product or a process.

Section 2-Matter Excluded from Patent Protection.

The following inventions, even if they are inventions within the meaning of section 1, are excluded from patent protection:

- (a) discoveries, scientific theories and mathematical methods;
- (b) schemes, rules or methods for doing business, performing purely mental acts or playing games;
- (c) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practised on the human or animal body; this provision shall not apply to products for use in any of those methods.
- (d) inventions, the prevention within the country of the commercial exploitation of which is necessary to protect public order or morality, which includes:
 - (i) the protection of human, animal or plant life or health; or
 - (ii) the avoidance of serious prejudice to the environment; if the exclusion is not made because the exploitation is prohibited,
- (e) plants and animals other than micro-organisms;
- (f) biological processes for the protection of plants or animals other than non-biological and micro-biological processes; and
- (g) plant varieties.

Section 4-Right to Patent; Naming of Inventor.

- (1) The right to a patent belongs to the inventor.
- (2) Where two or more persons have jointly made an invention, the right to the patent belongs to them jointly.
- (3) Where two or more persons have made the same invention independently of each

other, the person whose application has the earliest filing date or, if priority is claimed, the earliest validly claimed priority date shall have the right to the patent, as long as the application is not withdrawn, abandoned or rejected.

(4) The right to a patent may be assigned, transferred or devolve by succession.

(5) Where an invention is made in execution of an employment contract, the right to the patent belongs in the absence of any contractual provisions to the contrary, to the employer.

(6) Where the invention has an economic value much greater than the parties could have reasonably foreseen at the time of the conclusion of the contract, the inventor shall be entitled to a special remuneration, which shall be fixed by the court in the absence of an agreement between the parties.

(7) The inventor shall be named as the inventor in the patent, unless in a special written declaration signed by the inventor and addressed to the Registrar the inventor indicates a desire not to be named.

(8) Any promise or undertaking by the inventor made to any person to the effect that the inventor will make the declaration shall be without legal effect.

Section 6-Urity of Invention; Amendment and Division of Application.

(1) The application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

(2) The applicant may, up to the time when the application is in order for grant, amend the application, but the amendment shall not go beyond the disclosure in the initial application.

(3) The applicant may, up to the time when the application is in order for grant, divide the application into two or more applications namely divisional applications, but each divisional application shall not go beyond the disclosure in the initial application.

(4) Each divisional application is entitled to the filing date and, where applicable, the priority date of the initial application.

(5) The fact that a patent has been granted on an application that does not comply with the requirement of unity of invention under subsection (1) is not a ground for the invalidation of the patent.

Section 8-Information Concerning Corresponding Foreign Applications and Patents.

(1) The applicant shall, at the request of the Registrar, furnish the Registrar with the date and number of any foreign application.

(2) The applicant shall, at the request of the Registrar, furnish the Registrar with the following documents relating to any of the foreign applications referred to in subsection (1)

(a) a copy of any communication received by the applicant concerning the results of any search or examination carried out in respect of the foreign application;

(b) a copy of the patent granted on the basis of the foreign application;

(c) a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application.

(3) The applicant shall, at the request of the Registrar, furnish the Registrar with a copy of any final decision invalidating the patent granted on the basis of the foreign application referred to in subsection (2).

(4) For the purposes of this section "foreign application" means any application filed by the applicant abroad which relates to the same or essentially the same invention as that claimed in the application filed with the Patent Office.

Section 9-Filing Date; Examination.

(1) The Registrar shall accord as the filing date, the date of receipt of the application, if, at the time of receipt, the documents filed contain

(a) an express or implicit indication that the granting of a patent is sought;

(b) indications allowing the identity of the applicant to be established;

(c) a part which, on the face of it, appears to be a description of an invention.

(2) Where the Registrar finds that the application did not at the time of receipt, fulfil the requirements referred to in subsection (1), the Registrar shall invite the applicant to file the required correction and shall accord as the filing date, the date of receipt of the required correction.

(3) Where no correction is made, the application shall be treated as if it had not been filed.

(4) Where the application refers to drawings, which are not included in the application, the Registrar shall invite the applicant to furnish the missing drawings.

(5) Where the applicant

(a) complies with the invitation, the Registrar shall accord as the filing date, the date of receipt of the missing drawings; or

(b) does not comply with the invitation the Registrar, shall accord as the filing date, the date of receipt of the application and any reference to the missing drawings shall be treated as non existent.

(6) The Registrar, after according the filing date, shall examine whether the application complies with the requirements of section 5 subsections (1), (2), (3) and (4), and the other requirements designated as formal requirements and whether information requested under section 8, if any, has been provided.

(7) Where the Registrar is of the opinion that the application complies with the requirements indicated in subsection (6), the Registrar shall cause the application to be examined as to whether the requirements of sections 1(2) and (3), 2, 3, 5 (5), (6), (7), (8), and 6 have been complied with.

(8) For the purposes of subsection (7), the Registrar shall take into account

(a) the results of any international search report and any international preliminary examination report established under the Treaty in relation to the application; or

(b) a search and an examination report submitted under section 8(2)(a) which relates to a corresponding foreign application; or

(c) a final decision submitted under section 8(2)(c) on refusal to grant a patent on a corresponding foreign application; or

(d) a search and an examination report which was carried out upon the request of the Registrar by an external search and an examination authority.

Section 10-Grant of Patent; Changes in Patents.

(1) Where the Registrar finds that

(a) the application complies with the requirements under section 9 (6) and (7), the Registrar shall grant the patent;

(b) the application does not comply with the requirements under section 9 (6) and (7), the Registrar shall refuse the application and notify the applicant of the refusal.

(2) When the Registrar grants a patent, the Registrar shall

(a) publish a reference of the grant of the patent in the prescribed manner;

(b) issue to the applicant a certificate of the grant of patent and a copy of the patent;

(c) record the patent;

(d) make available copies of the patent to the public, on payment of the prescribed fee.

(3) The Registrar shall, whenever possible, give a final decision on the application not later than two years after the commencement of the examination referred to in section 9 (7).

(4) The Registrar shall, upon the request of the owner of the patent, make changes in the text or drawings of the patent in order to limit the extent of the protection.

(5) The Registrar shall not make any change where the change would result in the disclosure contained in the patent going beyond the disclosure contained in the initial application on the basis of which the patent is granted.

Section 12-Duration; Annual Fees.

(1) Subject to subsection (2), a patent shall expire twenty years after the filing date of the application for the patent.

(2) In order to maintain the patent or patent application, an annual fee shall be paid in advance to the Registrar for each year, starting one year after the filing date of the application for grant of the patent.

(3) A period of grace of six months shall be allowed for the late payment of the annual fee on payment of the prescribed surcharge.

(4) Where an annual fee is not paid in accordance with this section, the patent application shall be deemed to have been withdrawn or the patent shall lapse.

Section 13-Exploitation by Government or Authorized Person.

(1) Where

(a) public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy so requires, or

(b) a judicial or administrative body has determined that the manner of exploitation, by the owner of the patent or the owner's licensee, is anti-competitive, and the Minister is satisfied that the exploitation of the invention in accordance with this subsection would remedy that practice

the Minister may decide that, even without the consent of the owner of the patent, a Government agency or a third person designated by the Minister may exploit the invention.

(2) The exploitation of the invention shall be limited to the purpose for which it was authorized and shall be subject to the payment to the owner of an adequate remuneration, taking into account the economic value of the Minister's decision as determined in the decision, and where a decision has been taken under subsection (1) (b), the need to correct anti-competitive practices.

(3) The Minister shall take a decision after hearing the owner of the patent and any interested person if that person wishes to be heard.

(4) Upon a request of the owner of the patent, of the Government agency or of the third person authorized to exploit the patented invention, the Minister may, after hearing the parties, if either or both wish to be heard, vary the terms of the decision authorizing the exploitation of the patented invention to the extent that changed circumstances justify the variation.

(5) Upon the request of the owner of the patent, the Minister shall terminate the authorization if the Minister is satisfied, after hearing the parties, if either or both wish to be heard, that the circumstances which led to the Minister's decision have ceased to exist and are unlikely to recur or that the Government agency or third person designated by the Minister has failed to comply with the terms of the decision.

(6) Notwithstanding subsection (5), the Minister shall not terminate the authorization if the

Minister is satisfied that the need for adequate protection of the legitimate interests of the Government agency or third person designated by the Minister justifies the maintenance of the decision.

(7) Where a third person has been designated by the Minister, the authorization may only be transferred with the enterprise or business of that person or with the part of the enterprise or business within which the patented invention is being exploited.

(8) The authorization shall not exclude

(a) the conclusion of licence contracts by the owner of the patent; or

(b) the continued exercise, by the owner of the patent, of the owner's rights under section 11 (2).

(9) A request for the Minister's authorization shall be accompanied with evidence that the owner of the patent has received, from the person seeking the authorization, a request for a contractual licence, but that, that person has been unable to obtain the licence on reasonable commercial terms and conditions and within a reasonable time.

(10) Subsection (9) does not apply in cases of national emergency or other circumstances of extreme urgency but in such cases, the Registrar shall notify the owner of the patent of the Minister's decision as soon as reasonably practicable.

(11) The exploitation of the invention by the Government agency or third person designated by the Minister shall be predominantly for the supply of the market in the country.

(12) The exploitation of an invention in the field of semi-conductor technology shall only be authorized for public non-commercial use or where a judicial or administrative body has determined that the manner of exploitation of the patented invention, by the owner of the patent or the owner's licensee, is anti-competitive and if the Minister is satisfied that the issuance of the non-voluntary licence would remedy the practice.

(13) A person aggrieved by the Minister's decision under this section may appeal to the court.

Section 14-Non-Voluntary Licences.

(1) On a request, made to the court after the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last, the court may issue a non-voluntary licence if the court is satisfied that the patented invention is not exploited or is insufficiently exploited, by working the invention locally or by importation, in the country.

(2) Notwithstanding subsection (1), a non-voluntary licence shall not be issued if the owner of the patent satisfies the court that circumstances exist which justify the non-exploitation or insufficient exploitation of the patented invention in the country.

(3) The decision for issuing the non-voluntary licence shall specify

(a) the scope and function of the licence,

(b) the time limit within which the licensee shall begin to exploit the patented invention, and

(c) the adequate remuneration to be paid to the owner of the patent and the conditions of payment.

(4) The beneficiary of the non-voluntary licence may

(a) exploit the patented invention in the country according to the terms specified in the decision issuing the licence, or

(b) commence the exploitation of the patented invention within the time limit specified in the decision, and

(c) exploit the patented invention sufficiently.

(5) Where

(a) the invention claimed in a patent cannot be exploited in the country without infringing a patent granted on the basis of an application benefiting from an earlier filing or where appropriate, priority date, and

(b) where the invention claimed in the later patent involves an important technical advance of considerable economic importance in relation to the invention claimed in the earlier patent,

the court, upon the request of the owner of the later patent, may issue a non-voluntary licence to the extent necessary to avoid infringement of the earlier patent.

(6) Where a non-voluntary licence is issued under subsection (5), the court, upon the request of the owner of the earlier patent, shall issue a non-voluntary licence in respect of the later patent.

(7) In the case of a request for the issuance of a non-voluntary licence under subsections (5) and (6), subsection (3) shall apply with such modifications as are necessary with the proviso that no time limit needs to be specified.

(8) In the case of a non-voluntary licence issued under subsection (5), the transfer may be made only with the later patent, or, in the case of a non-voluntary licence issued under subsection (6), only with the earlier patent.

(9) The request for the issuance of a non-voluntary licence is subject to payment of the prescribed fee.

(10) Section 13(4) to (13) shall apply with such modifications as are necessary.

Section 15-Invalidation.

- (1) An interested person may request the court to invalidate a patent.
- (2) The court shall invalidate the patent
 - (a) if the person requesting the invalidation proves that a person has not complied with any of the requirements of sections 1(2) and (3), 2, 3, 5 (5), (6), (7) or (8); or
 - (b) if the owner of the patent is not the inventor or the inventor's successor in title.
- (3) An invalidated patent, or claim or part of a claim, shall be regarded as null and void from the date of the grant of the patent.
- (4) The registrar of the court shall notify the Registrar of the final decision of the Court.
- (5) The Registrar shall record the decision and publish a reference of it in the prescribed manner.

Section 16-Applicability of Provisions Relating to Patents.

- (1) Subject to section 17, the provisions of Part I shall apply, with such modifications as are necessary, to utility model certificates or applications for utility model certificates.
- (2) Where the right to a patent conflicts with the right to a utility model certificate in the case referred to in section 4(3), the provision shall apply as if the word "patent" were replaced by the words "patent or utility model certificate".

Section 17-Special Provisions Relating to Utility Model Certificates.

- (1) An invention qualifies for a utility model certificate if it is new and industrially applicable.
- (2) Section 3(1) and (5) does not apply in the case of an invention for which utility model certificate is requested.
- (3) Section 9 (7) does not apply in the case of applications for utility model certificates.
- (4) A utility model certificate shall expire, without a possibility of renewal, at the end of the seventh year after the date of the filing of the application.
- (5) With the exception of subsection (3), section 12 (1) does not apply in the case of utility model certificates.
- (6) In proceedings under section 15, the court shall invalidate the utility model certificate on the following grounds
 - (a) that the claimed invention did not qualify for a utility model certificate, having regard to subsection (1), section 3 (2), (3) and (6);
 - (b) that the description and the claims do not comply with the requirements prescribed by section 5 (5), (6) or (7);

(c) that any drawing which is necessary for the understanding of the invention has not been furnished; or

(d) that the owner of the utility model certificate is not the inventor or the inventor's successor in title.

(7) Section 15 (2) does not apply in the case of a utility model certificate.

Section 18-Conversion of Patent Applications or Applications for Utility Model Certificates.

(1) Prior to the grant or refusal of a patent, an applicant for a patent may, upon payment of the prescribed fee, convert the applicant's application into an application for a utility model certificate, which shall be accorded the filing date of the initial application.

(2) Prior to the grant or refusal of a utility model certificate, an applicant for a utility model certificate may, upon payment of the prescribed fee, convert the applicant's application into a patent application, which shall be accorded the filing date of the initial application.

(3) An application may not be converted under subsection (1) more than once.

Section 19-Filing Date and Effects of International Application Designating Ghana.

An international application designating Ghana shall, subject to this Part, be treated as an application for a patent or utility model certificate filed under this Act having as its filing date the international filing date accorded under the Treaty

Section 20-Patent Office as Receiving Office

The Patent Office shall act as receiving office in respect of an international application filed with it by a resident or national of Ghana.

Section 21-Filing of International Applications.

An international application shall be filed in a prescribed language with the Patent Office as receiving office and the prescribed transmittal fee shall be paid to the Patent Office.

Section 22-Patent Office as Designated Office.

The Patent Office shall act as a designated office in respect of an international application in which Ghana is designated for the purposes of obtaining a national patent or utility model certificate under this Act.

Section 23-Patent Office as Elected Office.

The Patent Office shall act as an elected office in respect of an international application in which Ghana is designated as referred to in section 22 if the applicant elects Ghana for the purposes of international preliminary examination under Chapter II of the Treaty.

Section 24-National Processing.

The Patent Office as a designated office or elected office shall not commence the processing of an international application designating Ghana before the expiration of the time limit referred to in section 25 except if the applicant complies with the requirements of that section and files with the Patent Office an express request for early commencement of the processing.

Section 25-Entering National Phase.

The applicant in respect of an international application designating Ghana shall, before the expiration of the time limit applicable under Article 22 or 39 of the Treaty or of a later time limit as may be prescribed in the Regulations

(a) pay the prescribed fee to the Patent Office, and

(b) where the international application was not filed or published in the prescribed language, the applicant shall submit an appropriate translation of the international application containing the prescribed contents.

Section 26-Failure to Enter National Phase.

Where the applicant does not comply with the requirements of section 25 within the time limit referred to in that section, the international application shall be considered withdrawn for the purposes of this Act.

Section 27-Harare Protocol.

An international application may designate Ghana for a patent under the Harare Protocol.

Section 28-Processing International Applications in Accordance with the Treaty.

(1) The Patent Office shall process an international application in accordance with

(a) the Treaty and regulations made under the Treaty; and

(b) the administrative instructions made under the regulations referred to in paragraph (a).

(2) Where the provisions of the Treaty, the regulations made under the Treaty and the administrative instructions made under the regulations conflict with this Act, the Treaty, or the regulations or the administrative instructions shall apply.

Section 29-Changes in Ownership; Licence Contracts.

(1) A change in the ownership of a patent, or the registration of a utility model certificate, or an application for a patent or a utility model certificate, shall be in writing.

(2) At the request of an interested party, the Registrar shall record the fact of the change and, except in the case of an application, the Registrar shall publish the change in the prescribed manner.

(3) The change shall have no effect against third parties until it has been recorded.

(4) A licence contract concerning a patent or a registered utility model certificate, or an application shall be submitted to the Registrar who shall keep its contents confidential but shall record it and publish a reference to it in the prescribed manner.

(5) The licence contract shall have no effect against third parties until it has been recorded.

Section 30-Representation.

Where an applicant's ordinary residence or principal place of business is outside the country, the applicant shall be represented by a legal practitioner resident and practicing in the country.

Section 31-Patent Registry.

(1) The Patent Registry shall be located at the Registrar-General's Department of the Ministry of Justice.

(2) The Registry shall be responsible for the registration of patents and for the administration of registered patents.

(3) The Registry shall be headed by the Registrar-General who shall be assisted by such Assistant Registrars as may be appointed in accordance with article 195 of the Constitution.

(4) The Registrar may delegate any functions of the office of the Registrar.

Section 32-Register.

(1) The Registry shall maintain a register for patents and utility model certificates.

(2) All the recordings provided for under this Act shall be recorded in the register.

(3) The register shall be open to the public and a person may obtain an extract from the register in the prescribed manner.

(4) The Registrar shall cause to be published in the Official Bulletin, Gazette or any print media any publications required under this Act.

Section 33-Corrections of Errors.

The Registrar may correct any error of translation or transcription, clerical error or mistake in any application or document filed with the Patent Office or in any recording effected pursuant to this Act.

Section 34-Extension of Time.

Where the Registrar is satisfied that the circumstances justify it, the Registrar may, upon receiving a written request, extend the time for doing any act or taking any proceeding

under this Act, upon notice to the parties concerned and upon the terms as the Registrar may direct.

Section 35-Exercise of Discretionary Powers.

The Registrar shall, in the exercise of a discretionary power conferred by this Act, comply with article 296 of the Constitution.

Section 36-Appeals.

An aggrieved person may appeal to the court against a decision taken by the Registrar under this Act.

Section 37-Offences.

Subject to sections 11(4), 13 and 14, a person who knowingly performs any of the acts referred to in section 11 (2) in the country without the consent of the owner commits an offence and is liable to a fine not exceeding two thousand penalty units or to imprisonment for a term not exceeding two years.

Section 38-Application of International Treaties.

The provisions of any international treaties in respect of industrial property to which the country is a party shall apply to matters dealt with by this Act and, in case of a conflict with this Act, the international treaty shall prevail over the Act.

Section 39-(1) The Minister may by legislative instrument make regulations for the effective implementation of this Act. (2) Without limiting subsection (1), the regulati

(1) The Minister may by legislative instrument make regulations for the effective implementation of this Act.

(2) Without limiting subsection (1), the regulations may prescribe

(a) the fees for any act for which payment is required under this Act;

(b) the details relating to the inspection of registers;

(c) time limits for the submission of specific things under this Act;

(d) additional details concerning the processing of international applications;

(e) measures to enable the Minister to stimulate, encourage, support inventive and innovative activities and to promote, patenting of inventions and utility models by citizens;

(f) any matter required or authorized to be prescribed by regulations.

Section 40-Administrative Instructions.

The Registrar may issue administrative instructions relating to the procedures under this Act.

Section 41-Interpretation.

In this Act, unless the context otherwise requires

"court" means the High Court;

"designate", "designated office," have the same meaning as in the Patent Cooperation Treaty;

"elected" "elected office" have the same meaning as in the Patent Cooperation Treaty;

"Harare Protocol" means the Protocol on Patents and Industrial Designs adopted in 1982 in Harare, Zimbabwe and ratified by the Government of Ghana on 30th September 1983;

"industry" covers, handicraft, agriculture, fishery and services;

"international application", "international filing date" "international preliminary examination" have the same meaning as in the Patent Cooperation Treaty;

"Minister" means the Attorney-General and Minister for Justice;

"Paris Convention" means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised;

"Treaty" means the Patent Cooperation Treaty done at Washington on June 19, 1970;

"priority date" means the date of the earlier application that serves as the basis for the right of priority provided for in the Paris Convention;

"receiving office" has the same meaning as in the Treaty;

"register" means the register referred to in section 32;

"Registrar" means the Registrar-General.

Section 42-Repeals and Savings.

(1) The Patent Law, 1992 (PNDCL 305A) is hereby repealed.

(2) Subsidiary legislation made under the law shall remain in force until revoked.

(3) Notwithstanding the repeal of the Patent Law, patents granted under the law shall remain in force but shall be deemed to have been granted under this Act.

(4) Patents granted shall remain in force for the unexpired period of the term of protection provided for under this Act, subject to the payment of annual maintenance fees provided for under this Act.

(5) The Minister may make any further transitional or saving provisions which appear to the Minister to be necessary or desirable.